

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|---------------------------|---|-------------------|
| UNITED STATES OF AMERICA, |) | 4:10CR3005-02 |
| |) | |
| Plaintiff, |) | MEMORANDUM |
| v. |) | AND ORDER |
| |) | |
| MELISSA SPEAR, |) | |
| |) | |
| Defendant. |) | |

The defendant pleaded guilty to conspiring to manufacture methamphetamine, and on August 24, 2010, was sentenced to 70 months' imprisonment (filing [73](#)). On March 11, 2011, the defendant filed a pro se notice of appeal (filing [79](#)). In response to this filing, the Clerk of Court has issued a memorandum to the undersigned which states that the notice of appeal "appears to be untimely, but within the 30-day period for extension of time for excusable neglect or good cause per [Federal Rule of Appellate Procedure 4\(b\)\(4\)](#)."

I agree that the notice of appeal is untimely, *see* [Fed. R. App. P. 4\(b\)\(1\)\(A\)\(i\)](#), but the Clerk is incorrect in stating that the defendant may be eligible for an extension of time. The notice of appeal was *not* filed within "30 days from the expiration of" the appeal deadline of "14 days after . . . the entry of either the judgment or the order being appealed." [Fed. R. App. P. 4\(b\)\(1\)\(A\)\(i\) & \(b\)\(4\)](#). Consequently, the defendant's notice of appeal, treated as a motion for extension of time to file an appeal, must be denied as untimely.

The Clerk of Court has also issued a memorandum to the undersigned inquiring whether the defendant may proceed in forma pauperis on appeal (filing [80](#)). In response to the Clerk's inquiry, I find that the appeal is not taken in good faith because the notice of appeal was not filed in a timely manner. The defendant therefore may not proceed in forma pauperis. *See* [Fed. R. App. P. 24\(a\)\(3\)](#).

IT IS ORDERED that:

1. The defendant's notice of appeal (filing [79](#)), treated as a motion for extension of time to file an appeal, is denied.
2. The Clerk of Court is directed not to process an appeal to the United States Court of Appeals for the Eighth Circuit on the basis of the aforesaid filing by the defendant.
3. In response to filing [80](#), the court hereby certifies pursuant to [Federal Rule of Appellate Procedure 24\(a\)\(3\)](#) that the defendant's appeal is not taken in good faith because the appeal is untimely, and the defendant may not proceed in forma pauperis on appeal.
4. Pursuant to [Federal Rule of Appellate Procedure 24\(a\)\(4\)](#), the Clerk of Court shall forward a copy of this memorandum and order to the Clerk of the United States Court of Appeals for the Eighth Circuit.

DATED this 14th day of March, 2011.

BY THE COURT:

s/ Richard G. Kopf

United States District Judge

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